

REMARKS

Claims 21-22 and 40-45 are active. To facilitate examination, the claims have been simplified. Claim 21 has been directed to the elected species: polyvinyl alcohol. Claim 22 has been amended to require the presence of an alginate in addition to the elected species of polyvinyl alcohol. Support for Claim 22 is found on page 3, line 15, and in Example 3 on page 8. New Claim 41 tracks prior Claim 21. New Claims 42-45 track prior Claims 36 and 37. No new matter has been added.

Restriction/Election

The Applicants previously elected with traverse Species 1 (polyvinyl alcohol) and 1b (decongestant effect). The requirement has been made FINAL. The Applicants understand that upon an indication of allowability for a generic claim as it reads on the elected species, that additional species of polymers, methods for treating skin, and polymerization methods will be examined.

Rejection—35 U.S.C. §103

Claims 21-26, 28, 34, 38 and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel, U.S. Patent No. 5,480,717, in view of Nielsen, WO 02/05737. The cited prior art does not render these claims obvious because it does not suggest or provide a reasonable expectation of success for the breathable pads of the invention.

Kundel is cited as disclosing hydrogel laminate bandages and composites (col. 6, lines 14-17). The term “composite” appears to refer to an “adhesive-coated substrate” coated with a polymer solution which is polymerized by ionizing radiation thus forming a hydrogel laminate which may be “used to form bandages”, see col. 5, lines 27-31 and 46, and col. 6,

lines 14-15. Thus, unlike the claimed products, the products of Kundel contain an intermediate layer of adhesive between the hydrogel and the substrate. In the invention, the hydrogel is applied directly to the substrate. However, Kundel uses a layer of adhesive between the hydrogel and the substrate. This distinguishes the Kundel products from those of the invention, since even if Kundel used a porous support, the adhesive would cover the porous support and interfere with the breathability of the resulting pad.

Nielsen (page 5, line 22-page 6, line 2) is cited as teaching applying a hydrogel directly to a porous support with no intervening adhesive to obtain the highest permeability. Nielsen is generally directed to wound dressings comprising a backing layer, an intermediate absorbent layer, and a skin facing layer, see abstract and figure on front page and does not disclose wound dressings containing a polyvinyl hydrogel layer as required by the present claims. Absorbent layers are provided for the uptake of body fluids, especially wound exudate, so as to enable the wound dressing to keep a constant moist environment over the wound site, and at the same time avoiding maceration of the skin surrounding the wound (see lines 7-11 of- page 1 of Nielsen).

At best, Nielsen only indicates that adhesive should not be applied between a backing layer and an absorbent layer, but does not address the issue of adhesive between a substrate and a hydrogel layer. Neither Nielsen, nor Kundel suggests omitting an adhesive between a hydrogel layer and a substrate. Moreover, neither document provides any motivation for omitting an adhesive in a hydrogel product, or any reasonable expectation of success that an adhesive could be omitted from a hydrogel product without compromising the structural integrity of the resulting product.

Col. 6, lines 14-17 does not disclose that the bandages formed from the hydrogel laminates are “breathable pads” as required by the rejected claims. Col. 4, lines 64 ff. disclose:

“suitable substrates included woven or nonwoven fabrics, plastic films, and laminates of woven or nonwoven fabrics and plastic films. It is generally preferred that the substrate include a moisture-impermeable thermoplastic film”.

While it is conceivable that some of the substrates described by Kundel may be porous, there is no suggestion in Kundel to select a porous support to provide a breathable pad as required by the invention. In fact, Kundel suggests just the opposite: that a moisture impermeable thermoplastic film be used and that a layer of adhesive be applied, which Nielsen indicates would compromise permeability (Nielsen, page 5, lines 22-23). Thus, Kundel would not suggest the present invention to one of ordinary skill in the art, because it provide no suggestion to select a porous substrate suitable for producing a breathable pad. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Rejection—35 U.S.C. §103

Claims 27 and 35-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel, U.S. Patent No. 5,480,717, in view of Nielsen, WO 02/05737, and further in view of Caskey, U.S. Patent Application 2004/0127826. This rejection is moot in view of the cancellation of these claims. With respect to Claims 42-44 which require the presence of volatile substance from plants, this rejection would not apply for the following reasons:

The two primary references have been addressed above.

Kundel provides no suggestion for incorporating an aromatic substance from a plant into a breathable pad. Indeed, such aromatic substances would not be released if an impermeable substrate were used. Thus, while col. 4, lines 35-40 are cited as disclosing that the hydrogel may contain “color stabilizers or coloring agents, and medicaments, such as antibacterial agents”, there is no disclosure of the use of aromatic substances, such as those required by rejected Claims 27, 35-37 and 39. The Nielsen product contains an absorbent

layer and not a hydrogel layer and also provides no motivation for incorporating an aromatic substance into a hydrogel or into a porous substrate.

Caskey is cited as disclosing honey compositions containing plant extracts “to facilitate wound healing” or to “augment the performance of the honey” [0086, 0103]. Caskey generally refers to “aromatic acids” at [0103}, but this is a general term for acids containing one or more benzene rings and does not specifically refer to aromatic (“having a strong distinctive fragrance”) plant extracts. Even if the plant additives of Caskey are interpreted as overlapping the aromatic compounds of the invention (see e.g., Claim 37), there is no suggestion in any of the cited art to add these components to a hydrogel or to a breathable pad, nor to add such plant extracts without also adding honey. Thus, the prior art provides no motivation for the breathable pads of the present invention, such as those of Claims 27, 35-37 and 39.

Rejection—35 U.S.C. §103

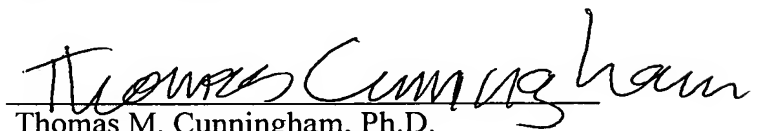
Claim 39 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel, U.S. Patent No. 5,480,717, in view of Nielsen, WO 02/05737, and further in view of Caskey, U.S. Patent Application 2004/0127826 and further in view of Mershon, US2003/0008011. This rejection is moot in view of the cancellation of Claim 39.

Conclusion

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. An early notification of such allowance is earnestly requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon


Thomas M. Cunningham, Ph.D.
Registration No. 45,394

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 03/06)